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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ANTHONY SWETALA, individually and on
behalf of all others similarly situated and the
general public,

Plaintiff,

v.

QUTEN RESEARCH INSTITUTE, LLC,

Defendant.

Case No.: 1:24-CV-00620-JLT-BAM

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT QUTEN RESEARCH
INSTITUTE, LLC'S MOTION TO
DISMISS PLAINTIFF'S CLASS ACTION
COMPLAINT**

Date: November 5, 2024

Time: 9:00 a.m.

Ctrm: 4

Judge: Hon. Jennifer L. Thurston

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I. INTRODUCTION

Plaintiff Anthony Swetala (“Plaintiff”) alleges that the advertising and marketing of Defendant Quten Research Institute, LLC’s (“Defendant”) Qunol dietary supplements (“Products”) are deceptive. The dosage representations made on the Products’ front labels are misleading because they lead reasonable consumers, like Plaintiff, to believe each unit in the Products contains the advertised dosage amount, when in fact, each unit contains only half or a third of the amount of nutrients advertised.

In its Motion to Dismiss (“Mot.”), Defendant argues (1) reasonable consumers are unlikely to be misled, (2) Plaintiff’s UCL claim should be dismissed, (3) Plaintiff’s fraud and negligent misrepresentation claims fail, (4) Plaintiff’s express and implied warranty claims fail, (5) Plaintiff fails to allege inadequate remedies at law, (6) Plaintiff’s quasi-contract/unjust enrichment claim fails, (7) Plaintiff cannot maintain common law claims on behalf of a nationwide class, and (8) Plaintiff lacks Article III standing to pursue injunctive relief. None of Defendant’s grounds for dismissal are persuasive. Other courts have previously rejected similar arguments and have declined to dismiss cases with nearly identical allegations to this one. *See, e.g., Cimoli v. Alacer Corp.*, 546 F.Supp.3d 897, 902-04 (N.D. Cal. 2021); *Walters v. Vitamin Shoppe Industries*, 701 F.App’x 667, 670 (9th Cir. 2017). Defendant’s Motion to Dismiss should be denied.

II. BACKGROUND

On May 24, 2024, Plaintiff Anthony Swetala (“Plaintiff”) filed a class action complaint against Quten Research Institute, LLC. *See* Dkt. No. 1 (“Compl.”). Plaintiff’s Complaint alleges that Defendant’s Qunol dietary supplement products are advertised with specific dosage representations that are false and misleading. Compl., ¶¶ 1-3. For example, the front label of the Qunol Extra Strength Magnesium 420 mg Product prominently represents the quantity of magnesium as “420 mg.” Compl., ¶ 13. The front label also represents that the Product contains “120 capsules.” *Id.*

The front label of the Qunol Extra Strength Magnesium 420 mg Product is reproduced below:

//



See Compl., ¶ 13. Reasonable consumers understood the dosage representations in a straightforward manner: each capsule will contain 420 mg of magnesium as stated on the front label. *Id.*, ¶ 2. Unbeknownst to reasonable consumers, this is not true. On the Product’s rear label, Defendant reveals that consumers must take two capsules to receive the advertised dosage of 420 mg and that each capsule only contains 210 mg of magnesium. *Id.*, ¶¶ 12-13.

Like other reasonable consumers, Plaintiff was deceived by Defendant’s advertising of the Products. “Plaintiff Anthony Swetala purchased Qunol Extra Strength Turmeric 1000 mg at a Walmart store located at 1110 East Prosperity Ave., Tulare, CA in or around January 2023 in reliance on the Product’s front label advertising.” Compl., ¶ 22. “In deciding to purchase the Product, Plaintiff read and relied on the dosage information displayed on the front label, which led Plaintiff to believe that each capsule of the product contained the advertised dosage – i.e., 1,000 mg of turmeric per capsule. At the time of purchase, Plaintiff did not know that the advertised dosage was false and misleading, and that more than one capsule would need to be consumed to receive the advertised dosage of turmeric.” *Id.*, ¶ 23. “Plaintiff would not have purchased the Product, or would not have paid as much as he did for it, had he known that each capsule contained

only a fraction of the advertised dosage. *Id.*, ¶ 24.

Plaintiff and other consumers have been deceived and suffered injury. *Id.* Plaintiff brings this class action on behalf of himself and similarly situated members of a nationwide class and California subclass, alleging violations of California’s Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”), California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”), California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* (“FAL”), and breach of express and implied warranties, negligent misrepresentation, intentional misrepresentation/fraud, and quasi contract/unjust enrichment. *Id.*, ¶¶ 38, 52-124.

III. LEGAL STANDARD

A pleading that sets forth a claim for relief “must contain a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8; *Conley v. Gibson*, 355 U.S. 41, 47 (1957) (holding that the purpose of pleading a “short and plain statement of the claim” is merely to “give Defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”); *accord Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). Indeed, “a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and ‘that a recovery is very remote and unlikely.’” *Twombly*, 550 U.S. at 556 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

Federal Rule of Civil Procedure 12(b) states that “Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required.” Fed. R. Civ. P. 12(b). However, Rule 12(b) does provide seven defenses that a party may assert....by motion.” *See* Fed. R. Civ. P. 12(b). Among the available defenses under Rule 12(b) is a defense “for failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). When ruling on a motion to dismiss for failure to state a claim upon which relief can be granted, the court accepts “allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” *Kniesel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). Thus, to survive a motion to dismiss, a Plaintiff is required to allege only “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570; *Ashcroft v. Iqbal*, 556 U.S. 662, 697 (2009). “The Ninth Circuit has clarified that (1) a complaint must ‘contain sufficient allegations of underlying facts to give

1 fair notice and to enable the opposing party to defend itself effectively,’ and (2) ‘the factual
 2 allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not
 3 unfair to require the opposing party to be subjected to the expense of discovery and continued
 4 litigation.’” *Burton v. Time Warner Cable Inc.*, No. CV 12-06764 JGB AJWX, 2013 WL 3337784,
 5 at *2 (C.D. Cal. Mar. 20, 2013) (quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)). The
 6 liberal pleading standard applied by federal courts comports with Rule 8(e), which says “Pleadings
 7 must be construed so as to do justice.” Fed. R. Civ. P. 8(e); *C.f. Sagan v. Apple Computer, Inc.*,
 8 874 F. Supp. 1072, 1077 (C.D. Cal. 1994) (“Parties are expected to use discovery, not the
 9 pleadings, to learn the specifics of the claims being asserted.”).

10 IV. ARGUMENT

11 A. Reasonable Consumers are Misled by Defendant’s Misleading Advertising

12 1. *The Products’ Front Labels are Affirmatively Misleading*

13 Plaintiff properly alleges that reasonable consumers are likely to be deceived by the
 14 Products’ front labels. Here, the Products’ front labels communicate a specific dosage amount to
 15 consumers. For example, the front label of the Qunol Extra Strength Magnesium 420 mg Product
 16 prominently represents – without any qualification – the quantity of magnesium as “420 mg.”
 17 Compl., ¶ 13. The front label also represents that it contains “120 capsules.” *Id.* Reasonable
 18 consumers would therefore expect each capsule to contain 420 mg of magnesium. Unfortunately,
 19 this is not the case. On the Product’s rear label, Defendant reveals that consumers must take two
 20 capsules to receive the advertised dosage of 420 mg and that each capsule only contains 210 mg
 21 of magnesium. *Id.* In this context, it is easy to see how reasonable consumers would be misled.
 22 Other courts have rejected the argument that similar dosage misrepresentations are not misleading
 23 to reasonable consumers. *See, e.g., Cimoli v. Alacer Corp.*, 546 F.Supp.3d 897, 902-04 (N.D. Cal.
 24 2021) (rejecting argument that dosage misrepresentations were not likely to deceive reasonable
 25 consumers; finding “750 mg” representation on front label of gummy vitamins container
 26 actionable under CLRA, notwithstanding product’s back-label clarification of dosage as per
 27 serving rather than per gummy).

28 Defendant argues, “[t]here is no deception where the label is truthful.” Mot. at 9:8.

1 However, the Products’ front labels are not truthful: they advertise specific dosage amounts of
 2 nutrients which are inaccurate, as each capsule, gummy, or chew contains only half or a third of
 3 the advertised dosage amount. Compl., ¶¶ 3, 37. Defendant also argues, “the front label of the
 4 Extra Strength Magnesium Product indicates that the total dosage amount per serving is 420 mg,
 5 which is true.” Mot. at 14:1-2. However, the front label does not indicate that the total dosage
 6 amount *per serving* is 420 mg. *See* Compl., ¶ 13. The Products’ front labels contain no qualifier or
 7 statement (*e.g.*, “per serving” or “per two capsules”) indicating that consumers are required to take
 8 multiple capsules to obtain the advertised dosages. Indeed, Defendant later admits that the
 9 Products’ front labels “do not state the serving size or the number of servings contained therein.”
 10 Mot. at 20:11-12. As such, Plaintiff reasonably understood that each capsule would contain the
 11 dosage advertised on the front label. *See Brady v. Bayer Corp.*, 26 Cal. App. 5th 1156, 1172 (2018)
 12 (“The front of the product makes no attempt to warn the consumer that a one-a-day jar of gummies
 13 is in fact full of two-a-day products”); *see also Whiteside v. Kimberly Clark Corp.*, 108 F.4th 771,
 14 780 (9th Cir. July 17, 2024) (representations on front label, without any qualifications, were
 15 plausibly misleading).

16 Nonetheless, Defendant argues “[t]here is nothing from which to infer that there is a one-
 17 to-one correlation between the dosage amount and the number of capsules, gummies, or chews.”
 18 Mot. at 20:8-9. However, the only information on the front label regarding dosage is that the
 19 Products contain, for example, “Magnesium 420 mg” and “120 capsules.” *See* Compl., ¶ 13.
 20 Without any further information on the front label, a consumer could reasonably conclude that the
 21 specified dosage applies per capsule. *See Brady*, 26 Cal. App. 5th at 1172; *see also Walters v.*
 22 *Vitamin Shoppe Industries*, 701 F.App’x 667, 670 (9th Cir. 2017) (reversing dismissal of
 23 fraudulent misrepresentation claim where front panel of products included a specific dosage
 24 representation without any indication as to whether dosage was per serving or per unit); *Williams*
 25 *v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008) (California’s FAL, CLRA, and UCL
 26 “prohibit ‘not only advertising which is false, but also advertising which, although true, is either
 27 actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the
 28 public.’”).

Defendant's reliance on *Ebner* is unfounded. *See* Mot. at 19:22 – 20:5. There, the court held that there was an “absence of any statement or other depictions anywhere on the package about [the alleged issue].” *Ebner v. Fresh, Inc.*, 838 F.3d 958, 966 (9th Cir. 2016). Last month, the Ninth Circuit made clear that its ruling in *Ebner* was not that the plaintiff failed to prove that the label's representations were deceptive, but that the label made *no representation at all.*” *See Whiteside v. Kimberly Clark Corp.*, 108 F.4th 771, 780 (9th Cir. July 17, 2024) (italics in original). By contrast, here, the dosage misrepresentations are plainly stated on the Products' front labels and these representations are contradicted by additional information on the back of the Products. Because the Products' front labels are affirmatively misleading, Defendant's Motion should be denied.

2. The Products' Rear Labels Do Not Shield Defendant From Liability

Defendant argues that reasonable consumers would not be misled because the Supplement Facts sections located on the Products' rear labels “plainly state the serving size for the dosage amount and the number of servings.” Mot. at 19:3-4. However, the Products' rear labels do not shield Defendant from liability for misrepresentations on the Products' front labels. The Ninth Circuit has made clear that “reasonable consumers” should not “be expected to look beyond misleading representations on the front of the box to discover the truth from the ingredient list in small print on the side of the box.” *Williams v. Gerber Prods. Co.*, 553 F.3d 934, 939-40 (9th Cir. 2008) (“We do not think that the FDA requires an ingredient list so that manufacturers can mislead consumers and then rely on the ingredient list to correct those misinterpretations and provide a shield for liability for the deception. Instead, reasonable consumers expect that the ingredient list contains more detailed information about the product that confirms other representations on the packaging.”); *see also Brady v. Bayer Corp.*, 26 Cal. App. 5th 1156, 1167-77 (2018) (rejecting argument that reasonable consumers “would read the label for the dosage[;]” serving size on back label indicating that two gummies a day were required did not shield defendant from liability for its misleading “One-A-Day” brand name, which implicated daily intake should be one per day). The Ninth Circuit recently confirmed, “*Williams* and *Brady* stand for the proposition that if a product's front label is plausibly misleading to reasonable customers, then the court does not

1 consider the back label at the pleadings stage. Whether the back label ultimately defeats the
 2 plaintiff's claims is a question left to the fact-finder." *Whiteside v. Kimberly Clark Corp.*, 108
 3 F.4th 771, 778 (9th Cir. July 17, 2024).

4 Relying on *McGinity* and *Moore*, Defendant argues that the Products' front labels are
 5 ambiguous and that reasonable consumers should be required to review the Products' rear labels
 6 to resolve any ambiguity. *See* Mot. at 20-21, citing *McGinity v. Procter & Gamble Co.*, 69 F.4th
 7 1093, 1097 (9th Cir. 2023) and *Moore v. Trader Joe's Co.*, 4 F.4th 874, 881 (9th Cir. 2021). Here,
 8 however, the Products' front labels are affirmatively misleading and do "not include the sort of
 9 inherent ambiguity which might put a consumer on notice to investigate the meaning of the label
 10 further." *See Caldwell v. Nordic Naturals, Inc.*, --- F.Supp.3d ---, No. 23-cv-02818, 2024 WL
 11 24325, at *5-6 (N.D. Cal. Jan. 2, 2024). In *McGinity*, the term "Nature Fusion" presented inherent
 12 ambiguity because the term "Fusion" indicates a mix of products but does not specify that mix—
 13 putting the consumer on notice that the product might include both natural and synthetic
 14 ingredients with an unspecified portion of each. 69 F.4th at 1095-99; *see also Whiteside*, 108 F.4th
 15 at 780 (finding "Nature Fusion" so devoid of any concrete meaning that there was nothing "from
 16 which *any* inference could be drawn or on which *any* reasonable belief could be based about")
 17 (*italics in original*). In *Moore*, the phrase "100% New Zealand Manuka Honey" was ambiguous
 18 because the advertised "100%" could relate either to the place of origin (New Zealand) or floral
 19 source (Manuka)—based on the syntax of the phrase. 4 F.4th at 882. Dissimilarly here, the Qunol
 20 Extra Strength Magnesium "420 mg" dosage representation does not innately communicate two
 21 different meanings, leaving a consumer to investigate which applies. "420 mg" commonly and
 22 clearly denotes "four hundred and twenty milligrams." *See Caldwell*, 2024 WL 24325, at *6
 23 (distinguishing *McGinity* and *Moore*; finding a "2x" moniker was not inherently ambiguous and
 24 clearly denotes "two times."). Additional information that could be investigated (that the Product's
 25 capsules contain only a fraction of the advertised dosage) is contradictory to and not a mere
 26 clarification of an ambiguity in the front label. Because the Products' front label dosage
 27 representations, *e.g.*, "420 mg" are not inherently ambiguous, "a reasonable consumer would not
 28 have been on notice to investigate the meaning of the front label further—even by reviewing the

back label of the product at issue; this alone ends the inquiry and distinguishes the case from *McGinity* and *Moore*.” *Caldwell*, 2024 WL 24325 at *6; *see also Whiteside v. Kimberly Clark Corp.*, 108 F.4th 771, 781 (9th Cir. 2024) (discussing *Brady*; finding “defendant was precluded from relying on the back label because the plaintiff had plausibly alleged that reasonable customers would see the front label as making an unambiguous representation. [] Put another way, reasonable consumers would not necessarily require more information before concluding that they needed to take only one vitamin daily.”).

Defendant next argues, “any reasonable consumer purchasing dietary supplements would look for information regarding how they should use those products prior to ingesting them and, to do so, would review the label as a whole.” Mot. at 22:6-8. However, the California Court of Appeals has expressly rejected the “untenable proposition” that “the hypothetical ‘reasonable consumer’ would, as a matter of law, examine the makeup of a daily vitamin supplement[.]” *Brady*, 26 Cal. App. 5th at 1160 (rejecting the position that the reasonable consumer “as a matter of law, necessarily look[s] behind the front label of a jar of [Defendant’s] gummies and in the course of that action, would discover that not one gummy but two is what the company recommends.”).

Defendant’s position is also contrary to the Ninth Circuit’s decision in *Walters*. There, the Ninth Circuit addressed nearly identical allegations regarding misleading dosages on a dietary supplement, and held that consumers are not “required, as a matter of law, to cross-reference statements on a product’s label against information found in small print elsewhere on the product.” *Walters v. Vitamin Shoppe Indus., Inc.*, 701 F. App’x 667, 670 (9th Cir. 2017) (“*Walters I*”). In *Walters*, the plaintiff, who was a medical doctor, alleged that multiple products sold by supplement retailer Vitamin Shoppe were deceptive because the front labels contained misleading dosage representations. *See Walters v. Vitamin Shoppe Indus., Inc.*, No. 3:14-CV-01173-PK, 2015 WL 3916972, at *2 (D. Or. June 25, 2015) (“*Walters I*”), *aff’d in part, rev’d in part and remanded by Walters II*, 701 F. App’x 667 (9th Cir. 2017). For example, the *Walters* plaintiff purchased dietary supplement capsules which promised “2000 mg” of L-Arginine-Ornithine, but failed to inform the consumer that he needed to consume two capsules to receive that dosage. *Id.* The Ninth Circuit held, “[a]pplying the logic of *Williams* to this case, *Walters* did not have a duty to validate claims

1 on the front of a product’s label by cross-checking them against information contained in small
 2 print on the back.” *Id.*, at 670. Just because *Walters* did not “read the clarifying serving-size
 3 information does not constitute a failure to reasonably safeguard his interests.” *Id.* (“Consumers
 4 review the small print on a product’s label to learn additional details about a product, not to correct
 5 potentially misleading representations found on the front.”) (citing *Williams*, 552 F.3d at 939
 6 (holding that “reasonable consumers” should not “be expected to look beyond misleading
 7 representations on the front of the box to discover the truth [elsewhere on] the box.”)).

8 *Cimoli v. Alacer Corp.*, 546 F. Supp. 3d 897, 903 (N.D. Cal. 2021) is also instructive.
 9 There, the plaintiff alleged that when he purchased Vitamin C gummies, he relied on the dosage
 10 information stated on the front label, which read “750 mg” and “45 Gummies.” *Cimoli*, 546
 11 F.Supp.3d at 900. The plaintiff contended that reasonable consumers—like himself—believed that
 12 *each* gummy contained 750 mg of Vitamin C. *Id.* The defendant filed a motion to dismiss arguing
 13 that the alleged misrepresentations are not deceptive because the product’s back label clarifies that
 14 the dosage of the Vitamin C is per serving, not per gummy. *Id.*, at 903. Relying on *Walters v.*
 15 *Vitamin Shoppe Indus., Inc.*, the district court denied the defendant’s motion, finding that the
 16 plaintiff “properly alleged an actionable misrepresentation.” *Id.*

17 The same reasoning applies here. Plaintiff purchased a product which promised a specific
 18 dosage amount of nutrients. Just because Plaintiff did not “read the clarifying serving-size
 19 information does not constitute a failure to reasonably safeguard his interests.” *Walters II*, 701 F.
 20 App’x at 670. Indeed, if the plaintiff in *Walters*, who is a medical doctor, is not expected to peruse
 21 through the back of the product to determine whether the representation on the front of the label is
 22 true, neither should Plaintiff. Thus, the Court should reject Defendant’s request which places the
 23 onus on consumers to discover the truth, expecting them to investigate the Products’ rear label and
 24 Supplement Facts to reveal the truth about the Products’ front label dosage misrepresentations.

25 Further, the Supplement Facts sections do not confirm the Products’ front labels. They
 26 provide additional information which *contradicts* the dosage representation on the front label.
 27 Defendant’s expectation that consumers should scour the back of the Products to obtain this
 28 additional, contradictory information not only belies ordinary consumer behavior, but has also

1 been expressly rejected by the Ninth Circuit and the California Court of Appeals. *Walters II*, 701
 2 F. App'x at 670; *Brady*, 26 Cal. App. 5th at 1160.

3 Defendant's cited cases are inapposite. *See* Mot. at 22:15-28. For example, in *Kim*, the
 4 Ninth Circuit held that "Arrowhead Brand's label is not likely to mislead a reasonable consumer
 5 to believe that the water was sourced exclusively from Arrowhead Mountain" where "the term
 6 'Arrowhead' [was] followed by the registration symbol '®' and the word 'Brand.'" *Kim v.*
 7 *Bluetriton Brands, Inc.*, No. 22-56063, 2024 WL 243343, at *1 (9th Cir. Jan. 23, 2024). In
 8 *Steinberg*, the court held, "the trade name 'Icelandic Provisions' on the Product's front label does
 9 not represent that the Product is made in Iceland." *Steinberg v. Icelandic Provisions, Inc.*, No. 21-
 10 cv-05568, 2022 WL 220641, at *5 (N.D. Cal. Jan. 25, 2022). These cases are inapposite, as
 11 Plaintiff does not allege that Qunol's brand name is misleading to reasonable consumers. In fact,
 12 Defendant recognizes in its Motion that "[t]here is no allegation here that the Qunol brand name
 13 is misleading in any way." Mot. at 25:6-7. Plaintiff challenges Defendant's misleading dosage
 14 representations, such as "420 mg" or "1000 mg." These representations are not brand or trade
 15 names, and are not ambiguous as to their meaning. *See Caldwell*, 2024 WL 24325, at *6 (finding
 16 an advertisement of "2x" clearly denotes "two times.").

17 **3. Defendant's Remaining Arguments are Unavailing**

18 Defendant contends that accurate dosage representations on competitor products (*e.g.*,
 19 advertising "400 mg" on product's front label where each capsule contains 400 mg of magnesium)
 20 "does not establish deception." Mot. at 23:17. However, Plaintiff does not allege that the Qunol
 21 Products are misleading due to the advertising on competitor products. Rather, Plaintiff alleges
 22 that the Qunol Products are misleading to reasonable consumers because the Products' front labels
 23 contain inaccurate dosage representations, with each capsule, gummy, or chew containing only a
 24 fraction of the advertised dosage. *See* Compl., ¶¶ 3, 37.

25 Defendant argues that, as in *Moore*, the Court should consider "other contextual
 26 information, including price differentials regarding the Products" to refute any notion of deception.
 27 *See* Mot. at 13:26-28. However, since there is no inherent ambiguity in the Products' front labels,
 28 other information should not be considered. *See Whiteside*, 108 F.4th at 781 ("a front label is

1 ambiguous when reasonable consumers would necessarily require more information before
 2 reasonably concluding that the label is making a particular representation. Only in these
 3 circumstances can the back label be considered at the dismissal stage.”). Additionally, the price
 4 differential in *Moore* was significant: the *Moore* plaintiff purchased a \$13.99 jar of honey,
 5 allegedly believing it to be 100% Manuka honey, while a jar containing 92% Manuka flower nectar
 6 costs approximately \$266.00. *Moore*, 4 F.4th at 878. The *Moore* court held that reasonable
 7 consumers “would thus not reasonably expect a jar of honey that is “100%” derived from Manuka
 8 to cost only \$13.99.” *See id.*, at 883-84. Here, a \$2 or \$3 price variation between two magnesium
 9 supplement products is not comparable to the \$250 price difference in *Moore* which “signal[ed] to
 10 a reasonable consumer that the product has a relatively lower concentration of honey derived from
 11 Manuka flower nectar.” *See id.* Furthermore, district courts “find that consumers should not be
 12 required to cross-check information on other products to discern the precise strength or potency of
 13 a product.” *Caldwell*, 2024 WL 24325 at *6. In this case, it is unreasonable to expect Plaintiff or
 14 other consumers to investigate and review the prices of all dietary supplement competitor products
 15 to determine whether Defendant’s front-label dosage misrepresentations are misleading.

16 At the very least, the Court should decline to make the factual determination urged by
 17 Defendant as to how consumers understand or interact with the Products’ labels, particularly in
 18 light of the Ninth Circuit and Court of Appeal’s guidance in *Walters*, *Williams*, and *Brady*. *Brady*,
 19 26 Cal. App. 5th at 1172 (“Bayer feels the reasonable consumer will be so motivated to ascertain
 20 the precise amounts of vitamins that of course he or she will scrutinize the back. We don’t think
 21 such a conclusion can be made as a matter of law at the pleading stage.”); *Williams*, 552 F.3d at
 22 938 (“whether or not a reasonable consumer would be misled is usually “a question of fact not
 23 appropriate for determination [on a motion to dismiss].”); *Davis v. HSBC Bank Nevada, N.A.*, 691
 24 F.3d 1152, 1162 (9th Cir. 2012); *Lilly v. ConAgra Foods, Inc.*, 743 F.3d 662, 665 (9th Cir. 2014).
 25 Even if the Court finds that Defendant’s reading of its own label is one plausible interpretation that
 26 consumers may understand from the Product’s label, the Court should still refuse to grant
 27 Defendant’s motion. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011) (when “there are two
 28 alternative explanations, one advanced by defendant and the other advanced by plaintiff, both of

1 which are plausible, plaintiff’s complaint survives a motion to dismiss [unless] defendant’s
2 plausible alternative explanation is so convincing that plaintiff’s explanation is implausible.”).

3 **B. Plaintiff’s UCL Claims Survive Dismissal**

4 Defendant argues that Plaintiff’s UCL claim must be dismissed because “there is no
5 deception.” This argument is refuted in Section III(A), *supra*. Because Plaintiff adequately alleges
6 that reasonable consumers are likely to be deceived due to Defendant’s affirmative
7 misrepresentations (*see* Section III(A), *supra*), Plaintiff’s UCL claim under the fraudulent prong
8 survives. Further, because Plaintiff has adequately pled that Defendant violates the CLRA and
9 FAL, he also adequately alleged that Defendant’s conduct is “unlawful” under the UCL. *See Mui*
10 *Ho v. Toyota Motor Corp.*, 931 F. Supp. 2d 987, 999 (N.D. Cal. 2013) (“Plaintiffs can plead a
11 UCL violation under the ‘unlawfulness’ prong by pleading that a business practice violated a
12 predicate federal, state, or local law” such as the CLRA and California’s express and implied
13 warranty statutes.”).

14 Similarly, because Plaintiff has established that Defendant’s conduct violates the CLRA,
15 Plaintiff has adequately demonstrated that Defendant’s conduct is “unfair” under the UCL. *Falk*
16 *v. Gen. Motors Corp.*, 496 F. Supp. 2d 1088, 1098 (N.D. Cal. 2007) (“This [conduct] constitutes
17 a violation of the CLRA, which in turn can be an unfair practice under the UCL.”). Here, there is
18 no benefit obtained by consumers through Defendant’s deceptive labeling practices. *See Dorfman*
19 *v. Nutramax Labs., Inc.*, No. 13cv0873 WQH (RBB), 2013 WL 5353043, at *13 (S.D. Cal. Sept.
20 23, 2013) (allegations regarding false and misleading claims on label “plausibly suggest that
21 Defendants engaged in an immoral, unethical, oppressive or unscrupulous business practice that
22 caused injury to consumers which outweighed its benefits” under the UCL) (internal quotation
23 marks omitted).

24 Finally, Plaintiff adequately alleges economic injury arising out of these predicate claims.
25 *See* Compl., ¶¶ 22-24, 29, 33-34. Defendant’s Motion should be denied.

26 **C. Plaintiff Adequately Alleges Claims for Fraud and Negligent Misrepresentation**

27 Defendant argues Plaintiff’s fraud and negligent misrepresentation claims fail under the
28 reasonable consumer standard. Mot. at 28:2-3. This argument was refuted in Section III(A), *supra*.

Defendant also argues that Plaintiff fails to plead knowledge of falsity and intent to defraud. Not so. The Complaint demonstrates that Defendant knew its dosage representations were false, misleading, or incomplete. Specifically, Plaintiff alleges that while Defendant prominently advertises the Qunol Products as containing a specific dosage amount, “each capsule does not contain the advertised dosage. Instead, each capsule, gummy, or chew contains only a fraction of the advertised dosage...” Compl., ¶¶ 2-3. Plaintiff alleges, “Defendant made such false and misleading statements and omissions with the intent to induce Plaintiff and Class Members to purchase the Products at a premium price...” Compl., ¶¶ 112-113. Further, “Defendant knew that consumers would pay more for a product if they believed they were receiving a higher dosage than that of competitors’ lawfully labeled products. For that reason, Defendant misrepresented the dosage of its Products so that Defendant could realize greater profits.” *See* Compl., ¶ 114. These allegations adequately show knowledge of falsity and intent to deceive. *See Cisco Systems, Inc. v. STMicroelectronics, Inc.*, 77 F.Supp.3d 887, 898 (N.D. Cal. 2014) (denying motion to dismiss negligent and intentional misrepresentation claims where plaintiff pleaded “sufficient facts from which it can be inferred that defendant either knew or should have known that the information provided was false or incomplete.”); *DiGiacinto v. RB Health (US) LLC*, 668 F.Supp.3d 950, 968 (N.D. Cal. 2023) (denying motion to dismiss fraud claim where plaintiff alleged packaging of product was false and misleading, defendant knew its packaging was false and misleading, and defendant intended to induce consumers to purchase the product at a premium price).

D. Plaintiff Adequately States a Claim for Breach of Express Warranties

Defendant’s argument that Plaintiff’s express warranty claim fails because his CLRA, FAL, and UCL claims fail should be denied for the reasons discussed in Section III(A), *supra*.

For a plaintiff to state a claim for breach of warranty, he must allege that: (a) Defendant made a warranty; (b) the product did not comply with the warranty at the time of sale; (c) plaintiff’s injury was proximately caused by the defective nature of the product; and (d) the plaintiff suffered damage. *Hauter v. Zogarts*, 14 Cal. 3d 104, 105 (1975). Here, Plaintiff alleges (1) Defendant’s dosage representations are affirmations of fact that the Products contain a specific dosage of nutrients; (2) the affirmations of fact and promises became part of the basis of the bargain to

1 purchase the Product when Plaintiff relied on the dosage misrepresentation when purchasing the
 2 Product; and (3) because the dosage misrepresentation was false or misleading, the warranty was
 3 breached, and (4) Plaintiff was injured.

4 Defendant argues “Plaintiff fails to plead an affirmation of fact or promise.” Mot. at 29:26
 5 – 30:8. However, the Complaint alleges that the Products’ front labels represent a specific dosage
 6 amount of nutrients, *e.g.*, “420 mg.” The Products do not comply with these dosage representations
 7 because each capsule, gummy, or unit contains only a half or a third of the advertised dosage
 8 amount. Compl., ¶¶ 3, 37. These allegations are sufficient at the pleadings stage. *See, e.g., Allred*
 9 *v. Kellogg Co.*, 2018 WL 1158885, at *6 (S.D. Cal. Feb. 23, 2018) (“While Kellogg continues to
 10 argue the labeling of its product contains a factually true statement [], the statement can be
 11 misleading based on the assumption of the reader. Whether the label actually provided a warranty
 12 and is likely to deceive a consumer are not appropriate questions to decide on a dismissal
 13 motion.”); *Sims v. Campbell Soup Co.*, No. EDCV18668PSGSPX, 2018 WL 7568640, at *9 (C.D.
 14 Cal. Sept. 24, 2018) (“Plaintiff has pointed to statements on the V8 Splash labels that she alleges
 15 created an express warranty. Whether or not they actually did depend on how they would be
 16 interpreted by consumers. The Court concludes that this is a factual question that cannot be
 17 determined on a motion to dismiss.”).

18 Defendant’s argument that the dosage representation is “an ambiguous statement” is
 19 refuted in Section III(A), *supra*. There is no question that the phrase “Extra Strength Magnesium
 20 420 mg” denotes “four hundred and twenty milligrams” of magnesium. Notwithstanding, to the
 21 extent Defendant presents its own interpretation of the dosage representations, the proper
 22 interpretation of those representations and whether they constitute an affirmation of fact is a
 23 question of fact that is premature at the pleading stage. *See McDonnell Douglas Corp. v. Thiokol*
 24 *Corp.*, 124 F.3d 1173, 1176 (9th Cir. 1997); *Pecanha v. Hain Celestial Grp., Inc.*, No. 17-CV-
 25 04517-EMC, 2018 WL 534299, at *8 (N.D. Cal. Jan. 24, 2018) (“Consistent with the [reasonable
 26 consumer standard], whether there was a breach of the warranty —i.e., that the deodorant products
 27 are [in accordance with the representations on the package]—is a question of fact that cannot be
 28 resolved at the 12(b)(6) phase.”); *Watson v. Solid Gold Pet, LLC*, No. CV 18-6479 PSG (SSx),

2019 WL 3308766, at *5 (C.D. Cal. Feb. 22, 2019) (“the Court finds that whether Defendant has breached its express warranty is a question of fact that is to be determined through this suit.”).

Last, Defendant argues Plaintiff failed to allege reliance. Mot. at 30:9-13. Not so. The Complaint alleges, “[i]n deciding to purchase the Product, Plaintiff read and relied on the dosage information displayed on the front label, which led Plaintiff to believe that each capsule of the product contained the advertised dosage – *i.e.*, 1,000 mg of turmeric per capsule.” Compl., ¶ 23. At the time of purchase, Plaintiff did not know that the advertised dosage was false and misleading, and that more than one capsule would need to be consumed to receive the advertised dosage of turmeric.” *Id.* The Complaint further alleges, “Plaintiff would not have purchased the Product, or would not have paid as much as he did for it, had he known that each capsule contained only a fraction of the advertised dosage.” *Id.*, ¶ 24. These allegations are sufficient to allege reliance.

E. Plaintiff Adequately States a Claim for Breach of Implied Warranties

Defendant argues that Plaintiff’s implied warranty claim fails because Plaintiff’s express warranty fails. Not so. *See* Section III(D), *supra*.

F. Plaintiff Adequately Alleges an Inadequate Remedy at Law

Defendant argues Plaintiff’s equitable claims should be dismissed because he has an adequate legal remedy. Mot. at 30:23 – 31:10, citing *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020). However, “[a] number of district court cases since *Sonner* have concluded that it has minimal application at the pleading stage.” *Murphy v. Olly Public Benefit Corp.*, 651 F.Supp.3d 1111, 1129 (N.D. Cal. 2023). Plaintiffs may seek “relief in the alternative or different types of relief.” *Nacarino v. Chobani, LLC*, No. 20-cv-7437-EMC, 2022 WL 344966, at *10 (N.D. Cal. Feb. 4, 2022) (quoting Fed. R. Civ. P. 8(a)(3)); *see also id.* (quoting *Sagastume v. Psychomedics Corp.*, No. CV 20-6624 DSF (GJSx), 2020 WL 8175597, at *7 (C.D. Cal. Nov. 30, 2020) (“*Sonner* does not hold that plaintiffs may not seek alternative remedies at the pleading stage.”)). The Court should decline to dismiss Plaintiff’s claims for equitable relief at this stage. *Id.*

Moreover, the equitable remedy of an injunction is appropriate where plaintiffs suffer continuing injury. *See Spirtos v. Allstate Inc., Co.*, No. CV 02–8798, 2003 WL 25900368, at *4 (C.D. Cal. 2003). This is especially true here because injunctive relief to halt Defendant’s

1 fraudulent advertising is necessary to redress the future risk of the same harm. Here, reasonable
 2 consumers, like Plaintiff, place great trust in the makers of over-the-counter dietary supplement
 3 products, like Defendant. *See, e.g., Brady v. Bayer Corp.*, 26 Cal.App.5th 1156, 1159 (2018)
 4 (“Americans...rely not only on their personal physicians...but upon pharmaceutical companies
 5 whose closely regulated research, production and merchandising have taken the place of expertise
 6 the average citizen is unable to develop”). Plaintiff’s allegation that he would like to purchase the
 7 Products again supports the inference that he may purchase the Products in the future on the belief
 8 that they are accurately labeled. *See Prescott v. Bayer HealthCare LLC*, No. 20-cv-00102, 2020
 9 WL 4430958, at *7 (N.D. Cal. 2020) (“Even though the named Plaintiffs may now know that
 10 reviewing the label could reveal some misunderstanding, it is plausible that they would forget to
 11 do so or instead choose to rely on Defendant’s principal representations.”). A legal remedy is not
 12 adequate in these circumstances, and it is therefore appropriate to permit Plaintiffs to assert the
 13 equitable remedy of an injunction. *See Souter v. Edgewell Personal Care Co.*, No. 20-cv-1486,
 14 2022 WL 485000, at *13 (S.D. Cal. Feb. 16, 2022) (“The Court agrees with Plaintiff that *Sonner*
 15 is inapplicable because it does not apply to claims of false advertising that may result in a future
 16 harm...”); *Deras v. Volkswagen Group of America, Inc.*, 2018 WL 2267448, at *6 (N.D. Cal.
 17 2018) (court finding “no bar to the pursuit of alternative remedies at the pleadings stage” where
 18 plaintiffs argued legal remedy was inadequate) (citing *Aberin v. Am. Honda Motor Co., Inc.*, 2018
 19 WL 1473085, at *9 (N.D. Cal. 2018)); *Lemus v. Rite Aid Corp.*, 613 F.Supp.3d 1269, 1283 (C.D.
 20 Cal. 2022) (“Plaintiff has alleged that he and other consumers ‘will not be able to rely on the labels
 21 in the future’ if the labelling or content of the Medication is not changed. [] As a result, Plaintiff
 22 has plausibly premised his claims for equitable relief on the possibility of future harm and it would
 23 be improper to dismiss such claims at this early stage of the litigation.”).

24 **G. Plaintiff’s Unjust Enrichment Claim Should Not Be Dismissed**

25 Defendant argues, “[b]ecause all of Plaintiff’s theories fail, [he] cannot show actionable
 26 deception or wrongdoing required for an unjust enrichment claim.” Mot. at 31:11-16. For the
 27 reasons discussed in Section III(A)-(F), *supra*, Plaintiff’s theories do not fail. In the Complaint,
 28 Plaintiff alleges “Defendant’s false and misleading labelling caused Plaintiff and the Class to

1 purchase the Products at a premium” and “[i]n this way, Defendant received a direct and unjust
 2 benefit, at Plaintiff and the Class’s expense.” Compl., ¶¶ 121-122. These allegations are sufficient
 3 to state an unjust enrichment/quasi-contract claim. *See Astiana v. Hain Celestial Group, Inc.*, 783
 4 F.3d 753, 762 (9th Cir. 2015) (allegations that defendant “had ‘entic[ed]’ plaintiffs to purchase
 5 their products through ‘false and misleading’ labeling, and that [defendant] was ‘unjustly enriched’
 6 as a result” were sufficient).

7 **H. Plaintiff Can Maintain His Common Law Claims on Behalf of a Nationwide Class**

8 Defendant argues that Plaintiff “fails to identify under which states’ law he attempts to
 9 bring” nationwide claims and therefore, the nationwide class must be dismissed. Mot. at 31:19-27.
 10 As an initial matter, the Complaint identifies California law for Plaintiff’s breach of express and
 11 implied warranty claims on behalf of a putative nationwide class. *See* Compl., ¶¶ 88-101; *see also*
 12 *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 561 (9th Cir. 2019) (“By default, California
 13 courts apply California law”) (citing *Wash. Mut. Bank, FA v. Superior Court*, 15 P.3d 1071,
 14 1080–81 (Cal. 2001)); *Harmsen v. Smith*, 693 F.2d 932, 946–47 (9th Cir. 1982) (noting that a
 15 district court sitting in diversity is “required to apply the substantive law of the state in which it
 16 sits, including choice-of-law rules”). Notwithstanding, Defendant has failed to identify any
 17 statutory basis requiring common law claims to be pleaded by reference to a particular state, and
 18 the Court should decline to require such a rule. *See B.K. v. Desert Care Network*, No. 2:23-cv-
 19 05021, 2024 WL 1343305, at fn. 2 (C.D. Cal. Feb. 1, 2024) (regarding decisions requiring putative
 20 class action common law claims to be pleaded by reference to a particular state, finding “the Court
 21 is not aware of a statutory basis for this rule and declines to apply it here.”).

22 **I. Plaintiff Has Standing to Pursue Injunctive Relief**

23 Defendant argues that Plaintiff lacks standing to pursue injunctive relief because Plaintiff
 24 is now aware that the Products’ dosage representations do not promise that each capsule, gummy,
 25 or chew will contain the advertised dosage amount. *See* Mot. at 32:16-20. However, the Ninth
 26 Circuit has rejected the argument that a “previously-deceived-but-now-enlightened plaintiff
 27 simply does not have standing under Article III to ask a federal court to grant an injunction” in
 28 *Davidson v. Kimberly-Clark Corporation*, 889 F.3d 956, 966-69 (9th Cir. May. 9, 2018)

1 (“*Davidson*”). The *Davidson* Court held that “a previously deceived consumer may have standing
 2 to seek an injunction against false advertising or labeling, even though the consumer now knows
 3 or suspects that the advertising was false at the time of the original purchase, because the consumer
 4 may suffer an ‘actual and imminent, not conjectural or hypothetical’ threat of future harm.” *Id.*, at
 5 969. To demonstrate that threat of future harm, a plaintiff must make “plausible allegations that
 6 she will be unable to rely on the product’s advertising or labeling in the future, and so will not
 7 purchase the product although she would like to...” *Davidson*, 889 F.3d at 969–70. Here, Plaintiff
 8 alleges that he “would like to, and would consider, purchasing the Products again when he can do
 9 so with the assurance that the Products’ labels are truthful and consistent with the Products’ actual
 10 ingredients.”¹ Compl., ¶ 31. Yet, “Plaintiff will be unable to rely on the Products’ advertising or
 11 labeling in the future, and so will not purchase the Products again although he would like to.” *Id.*,
 12 ¶ 32. This harm is sufficient to confer standing to seek injunctive relief. *Davidson*, 889 F.3d at
 13 967; *see also Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005) (when ruling on a motion to
 14 dismiss, the court accepts “allegations in the complaint as true and construe the pleadings in the
 15 light most favorable to the nonmoving party.”).

16 Defendant argues, “district courts within the Ninth Circuit routinely find similar allegations
 17 to be insufficient to establish any actual or imminent harm.” Mot. at 33:7-8. However, the cases
 18 cited by Defendant are distinguishable from the present case and from *Davidson*, as the plaintiffs
 19 only alleged the possibility of future injury by alleging that they “may” purchase the products in
 20 the future. *See Scheibe v. Livwell Products, LLC*, 2023 WL 4414580, at *9 (S.D. Cal. July 7, 2023)
 21 (distinguishing *Davidson* where plaintiff alleged that he “may wish to rely on Defendant’s label
 22 representations and purchase the Products in the future” and finding plaintiff did not allege “that
 23 he seeks to purchase the Products again in the future”); *see also Tabler v. Panera LLC*, 2019 WL
 24 5579529, at *8 (N.D. Cal. Oct. 29, 2019) (“Plaintiff still fails to allege any future injury that is
 25

26 ¹ Defendant argues, “there is no allegation that the ‘actual ingredients’ in the Products are
 27 misstated.” Mot. at 33:6. However, the front labels of the Products advertise a specific dosage
 28 amount of nutrients that are not truthful. The actual ingredients in the Products are therefore
 misstated.

1 ‘certainly impending.’ Instead, Plaintiff alleges only the *possibility* of future injury arising from
 2 the fact that Plaintiff ‘*may* purchase the Products in the future.’”) (italics in original). By contrast,
 3 here, Plaintiff adequately alleges that he would like to purchase the Products in the future. *See*
 4 Compl., ¶¶ 31-32. Plaintiff adequately alleges future harm. *Davidson*, 889 F.3d at 969–70.

5 Defendant also argues, “to the extent [Plaintiff] is confused in the future, the back labels
 6 explicitly disclose the serving size required to achieve the dosage amount.” Mot. at 32:18-20.
 7 However, the Ninth Circuit has made clear that “reasonable consumers” should not “be expected
 8 to look beyond misleading representations on the front of the box to discover the truth [elsewhere
 9 on] the box.” *Williams v. Gerber Prods. Co.*, 553 F.3d 934, 939-40 (9th Cir. 2008); *see also Shank*
 10 *v. Presidio Brands, Inc.*, No. 17-cv-00232-DMR, 2018 WL 1948830, at *5 (N.D. Cal. Apr. 25,
 11 2018) (rejecting argument that the plaintiff could read labels in the future to determine whether
 12 products were “all natural”); *see also Tucker v. Post Consumer Brands, LLC*, No. 19-cv-03993-
 13 YGR, 2020 WL 1929368, at *6 (N.D. Cal. April 21, 2020) (“Absent injunctive relief, plaintiff
 14 would not know whether honey is in fact a significant sweetener in defendant’s product based on
 15 the front of the cereal box. Nor is the onus on plaintiff to consult the ingredient list to try to discern
 16 this fact.”).

17 Defendant’s remaining authorities on this issue are unavailing. In both cases cited by
 18 Defendant, there was no threat of future injury because the front labels of the products were
 19 accurate. *See, e.g., Jackson v. Gen. Mills, Inc.*, No. 18-cv-2634-LAB (BGS), 2019 WL 4599845,
 20 at *5 (S.D. Cal. Sept. 23, 2019) (plaintiff failed to allege facts that she was misled; finding weight
 21 marked on the front of cereal boxes accurate); *Walcoff v. Innofoods USA, Inc.*, 2023 WL 3262940,
 22 at *7 (S.D. Cal. May 4, 2023) (“Plaintiff does not challenge the information on the front labels of
 23 each of the at-issue Products, which state that they contain ‘4g net carbs’ and ‘3g sugars’ per
 24 serving.”). By contrast, here, the dosage representations on the front of the Products’ labels are not
 25 accurate, as each unit of the Products contains only a half or a third of the advertised dosage
 26 amount. Due to the misrepresentations on the Products’ front labels, “Plaintiff will be unable to
 27 rely on the Products’ advertising or labeling in the future, and so will not purchase the Products
 28 again although he would like to.” *See* Compl., ¶ 32. These allegations are sufficient to confer

standing. *See Davidson*, 889 F.3d at 969-970. Defendant's Motion should be denied.

V. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court deny Defendant's Motion to Dismiss in its entirety. If the Court dismisses any portion of the Complaint, then Plaintiff respectfully requests leave to amend. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

Dated: August 22, 2024

Respectfully Submitted,

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